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INTERSTATE COMMERCE COMMISSION

MANUFACTURING AGREEMENT

Dated as of August 1, 1970

AMONG

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

ALLIS-CHALMERS LEASING CORPORATION

AND

THE WESTERN PACIFIC RAILROAD COMPANY

Covering 10 Locomotives

=====

MANUFACTURING AGREEMENT dated as of August 1, 1970, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Manufacturer), ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Purchaser), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee).

The Manufacturer has agreed to construct, sell and deliver to the Purchaser and the Purchaser has agreed to purchase the units of new, standard gauge railroad equipment described in Annex B attached hereto (hereinafter called the Equipment).

The Purchaser, as lessor, is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Lessee has joined in this Agreement for the purpose of making certain agreements as hereinafter set forth.

The Lessee is assigning to the Purchaser, pursuant to an Assignment of Purchase Agreements dated as of the date hereof in substantially the form annexed hereto as Annex D, among other things, a certain purchase agreement between the Lessee and the Manufacturer covering the Equipment.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Purchaser and the Purchaser will purchase from the Manufacturer and accept

delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Purchaser and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The Manufacturer agrees that the design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of such units of the Equipment as of the date of delivery thereof.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Purchaser, freight charges, if any, prepaid, at such point or points within the United States of America as shall be specified in Annex B or at such other point as may be designated by the Purchaser and the Lessee, and in accordance with the time of delivery schedule set forth in Annex B hereto, *provided, however*, that no unit of the Equipment shall be delivered under this Agreement until the Lease shall have been filed pursuant to Section 20c of the Interstate Commerce Act (and in delivering the Equipment, the Manufacturer may rely upon telegraph advice from counsel for the Purchaser that the Lease has been so filed).

The Manufacturer and the Lessee, each to the best of its knowledge, represent and warrant that at the time of the delivery of the Equipment to the Purchaser, the Equipment will not have been used by any person and no amortization or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor shortages, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before November 13, 1970, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer, the Purchaser and the Lessee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder. If the Manufacturer's failure to deliver the units of the equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Lessee providing for the purchase of such excluded equipment by the Lessee on the terms herein specified, payment to be made in cash in accordance with the terms of this Agreement after delivery of such excluded equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Lessee and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Purchaser (who may be employees of the Lessee), and the Manufacturer shall grant to any

such inspector or other authorized representative reasonable access to its plant. The Manufacturer agrees to inspect all materials entering into the construction of the Equipment in accordance with the reasonable standard quality control procedures of the Manufacturer. From time to time upon the completion of the construction of each unit or a number of units of the Equipment, such unit or units shall thereupon be presented to an inspector or other authorized representative of the Purchaser and the Lessee for inspection at the place designated for delivery of such unit or units of the Equipment and, if each such unit conforms to the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 hereof, such inspector or authorized representative shall promptly execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Purchaser and are marked in accordance with § 4 of the Lease; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 4 of Annex A hereto.

On delivery of each of the units of the Equipment hereunder and acceptance thereof on behalf of the Purchaser as aforesaid, the Purchaser assumes with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. Such base price, which may include freight charges, if any, from the Manufacturer's plant to the point of delivery, is subject to such increase or decrease as may be or has been agreed to by the Manufacturer, the Purchaser and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or de-

creased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3 and in Article 3 of the Other Agreements hereinafter referred to) for which settlement has theretofore been, and is then being, made under this Agreement and the manufacturing agreements referred to in Item 2 of Annex A hereto (hereinafter called the Other Agreements), would, but for the provisions of this sentence, exceed \$5,750,000, the Manufacturer and the Lessee will, upon request of the Purchaser, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for as specified by the Purchaser, as will after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreements to not more than \$5,750,000; and the Lessee agrees to purchase on the terms herein specified any such unit or units of the Equipment so excluded from this Agreement from the Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement, either directly or, if the Manufacturer and the Lessee shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 3 of Annex A hereto (the Equipment settled for on each Closing Date being hereinafter called a Group).

Subject to the provisions of Article 4 hereof, the Purchaser hereby promises to pay in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, an amount equal to the Purchase Price of all units of the Equipment in the

Group as set forth in the invoice or invoices therefor (such invoiced prices being herein called the Invoiced Purchase Prices).

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or prior to November 13, 1970), not more than ten business days following presentation by the Manufacturer to the Purchaser of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Purchaser and the Lessee by written notice delivered to the Manufacturer at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays in the State of California.

If the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Purchaser and the Lessee of such event and, if such amount shall not have been previously paid and the Manufacturer shall have otherwise complied with all conditions of its right to receive payment hereunder, such Group of the Equipment shall be excluded from this Agreement and the Lessee will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with interest thereon from such Closing Date to the date of payment by the Lessee at the rate of 10% per annum or the maximum rate permitted by law, whichever is the lesser.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 4. *Conditions to Obligations of the Purchaser.* The obligation of the Purchaser under this Agree-

ment to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the satisfaction, on or prior to the Closing Date with respect to such Group, of the following conditions:

(a) the Purchaser shall have received the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(i) Bill of Sale from the Manufacturer to the Purchaser, transferring to the Purchaser title to the units of the Equipment in such Group and warranting to the Purchaser and to the Lessee that at the time of delivery to the Purchaser under this Agreement the Manufacturer had title to such units of the Equipment and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and encumbrances of any nature, except only the rights of the Purchaser under this Agreement and the rights of the Lessee under the Lease;

(ii) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 hereof and the Certificate or Certificates of Delivery with respect thereto contemplated by § 1 of the Lease;

(iii) Invoice for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices of such units as set forth in said invoice;

(iv) Opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Purchaser, dated the Closing Date, stating that (A) this Agreement has been duly authorized, executed and delivered by the Manufacturer and the Lessee and is a legal and valid instrument binding upon the Manufacturer and the Lessee, (B) the Lease has been duly authorized, executed and delivered by the Lessee and is a legal and valid instrument binding upon the Lessee and enforceable in accordance with its terms, (C) title to the units of the Equipment in such Group is validly vested in the Purchaser, and such units, at the time of delivery thereof to the Purchaser, under this Agreement, were free of all claims, liens, security interests and encumbrances except only the rights of the Purchaser under this Agreement and the rights of the Lessee under the Lease, (D) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement or the Lease, or if any authority is necessary it has been obtained, and (E) the Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the title of the Purchaser to the units of the Equipment in the Group in any state of the United States of America;

(v) Opinion of counsel for the Lessee, dated the Closing Date, to the effect set forth in subclauses (C), (D) and (E) of clause (iv) of this subparagraph (a), and stating that (A) the Lessee is a duly organized and existing corporation in good standing under the laws of its state of incorporation, and has the power and authority to own its properties

and to carry on its business as now conducted, and (B) this Agreement has been duly authorized, executed and delivered on behalf of the Lessee and is a legal and valid instrument binding upon the Lessee in accordance with its terms; and

(vi) Opinion of counsel for the Manufacturer, dated the Closing Date, to the effect set forth in subclause (C) of clause (iv) of this subparagraph (a), and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) this Agreement has been duly authorized, executed and delivered by the Manufacturer and is a legal and valid instrument binding upon the Manufacturer in accordance with its terms;

(b) no Event of Default (as defined in the Lease) of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for in the Lease would constitute such an Event of Default shall have occurred and be continuing;

(c) the Purchaser shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Purchaser may reasonably request; and

(d) the Purchaser and the Lessee shall have entered into the Other Agreements with the respective parties thereto.

In giving the opinions specified in clauses (iv), (v) and (vi) of subparagraph (a) of the first paragraph of this Article 4, counsel may qualify any opinion to the effect that

any agreement is a legal and valid instrument, binding and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in clause (iv) of subparagraph (a) of the first paragraph of this Article 4, counsel may in fact rely, as to authorization, execution and delivery by the Manufacturer of the documents executed by the Manufacturer and title to the Equipment at the time of delivery thereof under this Agreement, on the opinion of counsel for the Manufacturer, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or of counsel for the Lessee as to such matter.

ARTICLE 5. *Warranties.* The Agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 4 of Annex A hereto, which said Item 4 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Purchaser and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Purchaser and the Lessee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing

or claimed to infringe on any patent or other right. The Lessee likewise will indemnify, protect and hold harmless the Manufacturer and the Purchaser from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer or the Purchaser, as the case may be, because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Lessee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Lessee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by the Lessee more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Lessee of any claim known to the Manufacturer from which liability may be charged against the Lessee hereunder and the Purchaser and the Lessee, respectively, will give notice

to the Manufacturer of any claim known to the Purchaser or the Lessee, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 7. *Taxes.* All payments to be made by the Purchaser or the Lessee hereunder will be free of expense to the Manufacturer with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which taxes, assessments, license fees, charges, fines or penalties the Purchaser or the Lessee, as the case may be, assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment, *provided, however*, that the Purchaser will have no obligation to pay any such taxes, assessments, license fees, charges, fines or penalties unless it shall have received payment thereof from the Lessee pursuant to § 5 of the Lease; the Lessee hereby agreeing to perform such obligation if the Lessor should fail to do so.

ARTICLE 8. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Purchaser, at P. O. Box 512, Milwaukee, Wisconsin 53201, attention of J. D. Maddry, Vice President and General Manager,

(b) to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention of Vice President—Finance,

(c) to the Manufacturer, at its address set forth in Item 5 of Annex A hereto,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 9. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 10. *Effect and Modification of Agreement.* This Agreement, and the Annexes relating hereto, exclusively and completely state the rights and agreements of the Manufacturer, the Purchaser and the Lessee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Purchaser, the Manufacturer and the Lessee.

ARTICLE 11. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California.

ARTICLE 12. *Successors and Assigns.* As used herein the terms Manufacturer, Purchaser and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Purchaser and the Lessee.

ARTICLE 13. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers or representatives and their respective

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

Vice President

Attest :

W. A. Burke
Assistant Secretary

by

Vice President and
General Manager

Attest:

test: 
.....
~~Assistant~~ Secretary

by

~~Vice President—Finance~~

Attest:

Josephine L. ...
Secretary

STATE OF WISCONSIN }
COUNTY OF Milwaukee } ss.:

On this 15th day of August, 1970, before me personally appeared W.D. Maddy, to me personally known, who, being by me duly sworn, says that he is the Vice President and General Manager of ALLIS-CHALMERS LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Richard F. Ellis
.....
Notary Public

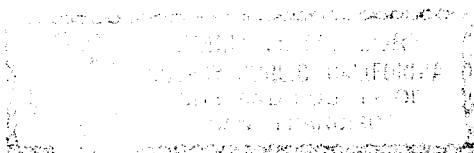
My commission expires RICHARD F. ELLIS
Notary Public, State of Wisconsin
Commission Is Permanent

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 17th day of August, 1970, before me personally appeared F.A. Tagher, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Emma N. McClure
.....
Notary Public

[NOTARIAL STAMP]

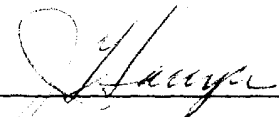


My Commission Expires April 5, 1971.

STATE OF ILLINOIS,)
) ss.
 COUNTY OF COOK,)

On this 2nd day of August, 1970, before me personally appeared **B. B. BROWNELL** to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

(Notarial Seal)



 Notary Public

My Commission Expires: OCTOBER 28, 1971

ANNEX A—GENERAL MOTORS

- Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation.
- Item 2: The three Manufacturing Agreements dated as of August 1, 1970, among the Purchaser, the Lessee and The Darby Products of Steel Plate Corporation, The Maxson Corporation and Pacific Car and Foundry Company, respectively.
- Item 3: For the purpose of making settlement, the Equipment may be divided into two Groups of units of the Equipment delivered to and accepted by the Purchaser, the first Group to consist of at least 5 units of the Equipment.
- Item 4: The Manufacturer warrants that each unit of the Equipment will be built in accordance with the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 of the Manufacturing Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants each unit of the Equipment to be suitable for the ordinary purposes for which such Equipment is used and to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit to the Purchaser or before such unit has been operated 250,000 scheduled service miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement F. O. B. factory and such

correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

There are no warranties, expressed or implied, made by the Manufacturer except the warranties set out above.

The Manufacturer further agrees with the Purchaser and the Lessee that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Purchaser and/or the Lessee of any of its rights under this Item 4.

Item 5: La Grange, Illinois 60525.

ADDITIONAL AGREEMENTS

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Purchaser.

Notwithstanding anything to the contrary contained in Articles 3 and 7 of the Agreement, it is understood and agreed that the base price of each unit of the Equipment shall include sales taxes payable by the Manufacturer to the State of Nevada with respect to such unit, and the terms "Purchase Price" and "Invoiced Purchase Prices" as used in the Agreement shall be deemed to include such sales taxes. Subject to the provisions of Article 4 of the Agreement, the Purchaser hereby promises to pay to the Manufacturer such sales taxes as part of the Invoiced Purchase Prices of the Units of the Equipment, without reimbursement therefor from the Lessee.

SECURITY AGREEMENT

Notwithstanding anything to the contrary contained in the Agreement, the Manufacturer shall and hereby does retain security title to and property in the Equipment until the Purchaser shall have paid the full amount of the Purchase Price of all the Equipment pursuant to the third paragraph of Article 3 of the Agreement, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Purchaser or the Lessee as provided in the Agreement or the Lease. When the Purchaser shall have paid the full amount of the Purchase Price of the Equipment, together with all other payments payable to the Manufacturer as provided in the Agreement, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Purchaser without further transfer or action on the part of the Manufacturer. On the Closing Date with respect to the last units of the Equipment to be settled for pursuant to Article 3 of the Agreement, the Manufacturer shall deliver to the Purchaser, in addition to the documents required to be delivered to the Purchaser pursuant to Article 4 of the Agreement, such in-

struments confirming such passage to the Purchaser of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby and such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Purchaser to the Equipment as shall be requested by the Purchaser.

Prior to the delivery and acceptance of any unit of the Equipment, the Purchaser shall cause the Agreement, and all supplements thereto, to be filed, registered or recorded and refiled, re-registered or re-recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Purchaser will promptly furnish to the Manufacturer evidences of such filing, registering or recording.

In the event of a default by the Purchaser in the payment of the Purchase Price of the Equipment pursuant to Article 3 of the Agreement, the Manufacturer shall have such remedies, including the right to take possession of the Equipment, as are available to a secured party pursuant to Article 9 of the Uniform Commercial Code of the State of California.

ANNEX B—GENERAL MOTORS

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (inclusive)	Unit Base Price*	Total Base Price*	Time and Place of Delivery
3000 H.P. Model GP-40 diesel-electric locomotives	No. 8056 dated June 2, 1969, as amended by No. 8056-3 dated July 1, 1968, as modified by agreements between the Manufacturer and the Lessee to the date hereof.	McCook, Illinois	10	WP 3517-3526	\$241,024	\$2,410,240	August, 1970, at Elko, Nevada

*Including sales tax.

5803

Lease of Railroad Equipment

between

ALLIS-CHALMERS LEASING CORPORATION

and

THE WESTERN PACIFIC RAILROAD COMPANY

Dated as of August 1, 1970

LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1970, between ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Lessor), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into four Manufacturing Agreements each dated as of August 1, 1970 (hereinafter called the Manufacturing Agreements), with THE DARBY PRODUCTS OF STEEL PLATE CORPORATION, GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), THE MAXSON CORPORATION and PACIFIC CAR AND FOUNDRY COMPANY (hereinafter referred to as the Manufacturers), respectively, wherein the Manufacturers have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Appendix A hereto; and

WHEREAS, the Lessee desires to lease all the units of said equipment or such lesser number of units thereof as are delivered to and accepted under the Manufacturing Agreements on or prior to November 13, 1970 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the

Manufacturing Agreements. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarter-annual payments payable on February 15, May 15, August 15 and November 15 of each year, commencing November 15, 1970; *provided, however*, that if any of such payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such quarter-annual payment shall be in an amount equal to 3.05353275% of the Purchase Price (as such term is defined in the Manufacturing Agreement pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease less .0250% of the Purchase Price of such Unit for each day elapsed from and including August 15, 1970 to and including the business day immediately prior to the Closing Date (as such term is defined in the Manufacturing Agreement pursuant to which such Unit is being acquired by the Lessor) in respect of such Unit, and the 59 remaining quarter-annual payments shall each be in an amount equal to 3.05353275% of said Purchase Price of each such Unit.

All rentals and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor, by depositing the amount of such rental or

other payment to the account of the Lessor, number 0101-01508 at Crocker-Citizens National Bank, One Sansome Street, San Francisco, California after the close of business on the business day immediately prior to the date such rental or other payment is due or, in the event of an assignment of this Lease by the Lessor, at such other place and in such other manner as the Lessor shall in writing direct.

All sums payable under this Lease shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and accept-

ance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due hereunder.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Appendix A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“ALLIS-CHALMERS LEASING CORPORATION,
OWNER AND LESSOR”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may

cause the Units to be lettered "Western Pacific Railroad" or "Western Pacific" or "W. P." or with other names or initials or insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than (i) any federal income or other similar taxes measured by net income payable by the Lessor in consequence of the receipt of such payments, and (ii) all state, city or local income taxes, gross receipts or other taxes measured by net income [the taxes enumerated in clauses (i) and (ii) being hereinafter collectively called the Excluded Taxes], except any such taxes which are in substitution for or relieve the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments other than for Excluded Taxes, or license fees and any charges, fines or penalties in connection therewith (hereinafter called Impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Manufacturing Agreements, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which.

might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, Lessor shall promptly notify Lessee of the Impositions charged or levied, and Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event that the Lessor shall become obligated to make any payment to the Manufacturers pursuant to Article 7 of the Manufacturing Agreements not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 7.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show ownership of such Units by the Lessor or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within fifteen business days after the Lessee shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor in writing with respect thereto. On the rental payment date next succeeding such notice (or in the event such rental payment date shall occur within 30 business days after such notice shall have been given, then on the next succeeding rental payment date) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event any Unit is completely destroyed or irreparably damaged, the Lessee shall, as agent for the Lessor, dispose of such Unit as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Unit so disposed of, the Lessee may retain all amounts of such price and any damage payments or awards received by the Lessee by reason of the Casualty Occurrence up to the Casualty Value attributable to such Unit, and shall remit the excess if any to the Lessor. In disposing of such Unit, the Lessee shall take such action as the Lessor shall reasonably request, to terminate any con-

tingent liability which the Lessor might have arising after such disposition from or connected with such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	103.9%	31	80.6%
2	103.8	32	79.0
3	103.7	33	77.4
4	103.6	34	75.8
5	103.4	35	74.1
6	103.2	36	72.3
7	102.9	37	70.5
8	102.5	38	68.6
9	102.1	39	66.7
10	101.7	40	64.8
11	101.2	41	62.8
12	100.6	42	60.7
13	100.0	43	58.6
15	99.3	44	56.4
15	98.6	45	54.2
16	97.9	46	52.0
17	97.1	47	49.6
18	96.3	48	47.2
19	95.4	49	44.8
20	94.4	50	42.3
21	93.4	51	39.8
22	92.4	52	37.3
23	91.3	53	33.7
24	90.1	54	30.0
25	88.9	55	29.3
26	87.6	56	26.5
27	86.3	57	23.7
28	85.0	58	20.8
29	83.6	59	18.0
30	82.1	60 and thereafter	15.0

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it, and the Lessee shall furnish to the Lessor such copies of the policies, or other evidences of such insurance as the Lessor shall reasonably request. Such insurance shall be payable to the Lessor and the Lessee as their interests may appear. All insurance proceeds received by the Lessor shall be paid over to the Lessee if the Lessee has fully complied with all of its obligations and indemnifications hereunder in respect of the risk insured against for which such proceeds were paid by the insurance company.

§ 7. *Annual Reports; Financial Information.* On or before August 1, in each year, commencing with the year 1971, the Lessee will cause to be furnished to the Lessor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings re-

quired by § 4 hereof shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

So long as this Lease shall remain in force with respect to any Unit, the Lessee will furnish to the Lessor (i) as soon as available, and in any event within 30 days after the end of each quarter of each fiscal year, such statements of the financial condition and results of operations of the Lessee (which need not be audited) as the Lessor shall reasonably request and (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the audited balance sheet of the Lessee as at the end of such fiscal year and of the audited statements of income and retained earnings of the Lessee for such fiscal year. Such audited balance sheet and statements shall be prepared in reasonable detail, in accordance with generally accepted accounting principles, and shall be accompanied by a report and opinion of independent public accountants of recognized standing selected by the Lessee, which report and opinion shall be based upon an examination made in accordance with generally accepted auditing standards.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to**

the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as Purchaser, under the provisions of Articles 5 and 6 of, and Item 4 of Annex A to, the Manufacturing Agreements. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units to the extent such laws or rules affect the operation or use of the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as

and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless such Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore pro-

vided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which, after the expiration of this Lease with respect to such Unit, the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from, all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 14. *Opinions of Counsel for the Lessee and the Lessor.* On each Closing Date (as defined in the Manufacturing Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of California, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms, and the Consent and Agreement has been duly authorized and, when executed and delivered, will constitute a valid, legal and binding agreement of the Lessee;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recording will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Consent and Agreement;

E. the entering into and performance of this Lease or the Consent and Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

On each Closing Date, the Lessor will deliver to the Lessee counterparts of the written opinion of counsel for

the Lessor, addressed to the Lessee, in scope and substance satisfactory to the Lessee and its counsel, to the effect that:

A. the Lessor is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Wisconsin with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a valid, legal and binding agreement of the Lessor; and

C. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to an owner of property, including (without limitation) the Rapid Amortization Deduction (as defined in § 9 of this Lease), with respect to the Units.

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Unit available to non-railroad lessors of railroad equipment because such Unit shall not be “qualified railroad rolling stock” within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder (other than a failure to be “qualified railroad rolling stock” because of action taken or permitted by the Lessor with respect to title to the Units or otherwise), the rental rate applicable to such

Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased to such rental rate for such Unit as, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Cravath, Swaine & Moore, or other independent counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest to the Lessor as aforesaid, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Rapid Amortization Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, on the next succeeding rental payment date after such judgment or decree shall have become final, the rental rate in respect of such Unit set forth in § 2 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse the Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the first paragraph of this § 15 and the rental rate applicable to such Unit pursuant to § 2 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the second paragraph of this § 15, over (ii) the difference between (A) an amount equal to interest at the rate of 10% per annum on the amount of any federal income taxes paid by the Lessor on account of the disallowance or inability to claim the Rapid Amortization Deduction on such Unit and (B) the amount of any interest to which the Lessor is entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) above exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor, promptly on demand.

The agreements of the Lessor and the Lessee to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under each Manufacturing Agreement, the Lessor, as a condition to its obligation to lease the units to the Lessee hereunder, shall have received counterparts of the written opinion of

Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Internal Revenue Code of 1954, as amended), as provided for in said Section 184, whichever the Lessor elects.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing and recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor and the Lessee will each pay one-half of the reasonable costs and expenses involved in the preparation and printing of this Lease and the Manufacturing Agreements. The Lessee will pay the fees and disbursements of its counsel and one-half of the fees and disbursements, if any, of counsel for the Lessor.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $10\frac{1}{2}\%$ per annum or the maximum amount permitted by law, whichever is the lesser, of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, addressed as follows:

if to the Lessor, at Box 512, Milwaukee, Wisconsin 53201, attention of J. D. Maddry, Vice President and General Manager,

if to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention of Vice President—Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of August 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals

to be hereunto affixed and duly attested, all as of the date
first above written.

ALLIS-CHALMERS LEASING
CORPORATION,

by
*Vice President and
General Manager*

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

THE WESTERN PACIFIC RAILROAD
COMPANY,

by
Vice President—Finance

[CORPORATE SEAL]

Attest:

.....
Secretary

STATE OF WISCONSIN }
COUNTY OF } ss.:

On this day of August, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and General Manager of ALLIS-CHALMERS LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....
Notary Public

My commission expires

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this day of August, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL STAMP]

and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless such Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore pro-

vided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which, after the expiration of this Lease with respect to such Unit, the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from, all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 14. *Opinions of Counsel for the Lessee and the Lessor.* On each Closing Date (as defined in the Manufacturing Agreements), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of California, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms, and the Consent and Agreement has been duly authorized and, when executed and delivered, will constitute a valid, legal and binding agreement of the Lessee;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recording will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Consent and Agreement;

E. the entering into and performance of this Lease or the Consent and Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

On each Closing Date, the Lessor will deliver to the Lessee counterparts of the written opinion of counsel for

the Lessor, addressed to the Lessee, in scope and substance satisfactory to the Lessee and its counsel, to the effect that:

A. the Lessor is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Wisconsin with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a valid, legal and binding agreement of the Lessor; and

C. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to an owner of property, including (without limitation) the Rapid Amortization Deduction (as defined in § 9 of this Lease), with respect to the Units.

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Unit available to non-railroad lessors of railroad equipment because such Unit shall not be “qualified railroad rolling stock” within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder (other than a failure to be “qualified railroad rolling stock” because of action taken or permitted by the Lessor with respect to title to the Units or otherwise), the rental rate applicable to such

Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased to such rental rate for such Unit as, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Cravath, Swaine & Moore, or other independent counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest to the Lessor as aforesaid, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Rapid Amortization Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, on the next succeeding rental payment date after such judgment or decree shall have become final, the rental rate in respect of such Unit set forth in § 2 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse the Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the first paragraph of this § 15 and the rental rate applicable to such Unit pursuant to § 2 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the second paragraph of this § 15, over (ii) the difference between (A) an amount equal to interest at the rate of 10% per annum on the amount of any federal income taxes paid by the Lessor on account of the disallowance or inability to claim the Rapid Amortization Deduction on such Unit and (B) the amount of any interest to which the Lessor is entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) above exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor, promptly on demand.

The agreements of the Lessor and the Lessee to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under each Manufacturing Agreement, the Lessor, as a condition to its obligation to lease the units to the Lessee hereunder, shall have received counterparts of the written opinion of

Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Internal Revenue Code of 1954, as amended), as provided for in said Section 184, whichever the Lessor elects.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidences of all such filing and recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor and the Lessee will each pay one-half of the reasonable costs and expenses involved in the preparation and printing of this Lease and the Manufacturing Agreements. The Lessee will pay the fees and disbursements of its counsel and one-half of the fees and disbursements, if any, of counsel for the Lessor.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10½% per annum or the maximum amount permitted by law, whichever is the lesser, of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, addressed as follows:

if to the Lessor, at Box 512, Milwaukee, Wisconsin 53201, attention of J. D. Maddry, Vice President and General Manager,

if to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention of Vice President—Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of August 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals

to be hereunto affixed and duly attested, all as of the date
first above written.

ALLIS-CHALMERS LEASING
CORPORATION,

by
*Vice President and
General Manager*

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

THE WESTERN PACIFIC RAILROAD
COMPANY,

by
Vice President—Finance

[CORPORATE SEAL]

Attest:

.....
Secretary

STATE OF WISCONSIN }
COUNTY OF } ss.:

On this day of August, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and General Manager of ALLIS-CHALMERS LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....
Notary Public

My commission expires

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this day of August, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL STAMP]

APPENDIX A

<u>Type</u>	<u>Manufacturer's Specifications*</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>
2220 cu. ft. 100-ton open top hopper cars	No. 70-7013	The Darby Products of Steel Plate Corporation	47	WP 10001-10047
3000 H. P. Model GP-40 diesel electric locomotives	No. 8056 dated June 2, 1969, as amended by No. 8056-3 dated July 1, 1968	General Motors Corporation (Electro-Motive Division)	10	WP 3517-3526
65'6" 100-ton drop end gondola cars	No. 270 dated November 3, 1969	The Maxson Corporation	15	WP 9051-9065
50'6" 70-ton insulated box cars	PC-169 dated October 8, 1969	Pacific Car and Foundry Company	100	WP 68226-68325

*As modified by agreements between the Manufacturer and the Lessee to the date hereof.

APPENDIX B

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of _____, 197____, by and between ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Company), and

(hereinafter called the Secured Party), under dated as of _____, 197____, (hereinafter called the Security Agreement), between the Secured Party and the Company.

WHEREAS the Company, as Lessor, and The Western Pacific Railroad Company, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Security Agreement), providing for the leasing by the Company to the Lessee of the Units (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Security Agreement and as an inducement to the Lenders under the Security Agreement to advance their funds to the Lessor pursuant to the Security Agreement, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Secured Party;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Security Agreement, the Company hereby assigns, transfers, and sets over unto the Secured Party all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or

pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Secured Party at [address at which Secured Party desires payments to be made]. The Secured Party will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable under the Security Agreement and the Secured Party shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts then due and payable by the Company under the Security Agreement; and *second*, so long as, to the actual knowledge of the Secured Party, no Event of Default (as defined in the Security Agreement) shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Secured Party. So long as, to the actual knowledge of the Secured Party, an Event of Default shall then be continuing, the Secured Party shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Security Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Security Agreement in

the event that such amounts shall have been paid by the Lessee pursuant to the Lease, the Security Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Secured Party.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Secured Party not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified

therein; to hold any Payments received by the Company which are assigned and set over to the Secured Party by this Assignment in trust for the Secured Party and to turn them over to the Secured Party forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Security Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Secured Party, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Secured Party may appear.

(c) That should the Company fail to make any payment or to do any act herein provided, then the Secured Party, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Secured Party may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Secured Party, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Secured Party under the authority hereof, together with interest thereon at the rate of % per annum.

4. The Company does hereby constitute the Secured Party the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Secured Party may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Security Agreement the assignment made hereby and all rights herein assigned to the Secured Party shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Security Agreement have each been duly authorized, and the Lease, this Assignment and the Security Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease (except assignments made expressly subject hereto in the manner permitted by Paragraph 14 hereof and § 11 of the Lease) and the Secured Party's right to receive all payments under the Lease is and

will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Security Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Security Agreement on or prior to the date hereof and (e) the Lease and the Security Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Security Agreement) or any event which with notice and/or lapse of time would constitute such an Event of Default.

If an Event of Default (as defined in the Security Agreement) shall occur and be continuing, the Secured Party shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Secured Party under the Security Agreement, including any right, privilege or remedy to take possession of the Units, if any, and (ii) to do any acts which the Secured Party deems proper to protect the security hereof, either with or without taking possession of the Units; subject in any event to the rights of the Lessee as contained in § 11 of the Lease. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Security Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Secured Party that in any suit, proceeding or action brought by the Secured Party under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to

enforce any provisions of the Lease, the Company will save, indemnify and keep the Secured Party harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Secured Party or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Secured Party may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Secured Party may assign to any successor secured party pursuant to the Security Agreement all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Secured Party hereunder.

10. The Company agrees that it will not, without the prior written consent of the Secured Party, enter into any agreement amending, modifying or terminating the Lease

and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the State of _____; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Secured Party at such address as the Secured Party shall designate.

13. The Company, at the Lessee's expense, will promptly cause this Assignment and any consent and agreement hereto by the Lessee to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

14. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

ALLIS-CHALMERS LEASING
CORPORATION

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Secretary

Accepted:

[SECURED PARTY],

by
Vice President

ANNEX I TO APPENDIX B

LESSEE'S CONSENT AND AGREEMENT

The undersigned, THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee), the lessee named in the Lease dated as of August 1, 1970, (hereinafter called the Lease) between ALLIS-CHALMERS LEASING CORPORATION (hereinafter called the Lessor) and the Lessee, and referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of the date hereof, hereby (a) acknowledges receipt of a copy of said Collateral Assignment of Lease and Agreement (hereinafter called the Assignment) and (b) consents to all the terms and conditions of said Assignment.

As an inducement to the Secured Party referred to in the Assignment, to loan funds pursuant to the [title of the Agreement pursuant to which funds are advanced] referred to in the Assignment, pursuant to which the Lessor is granting a security interest in the units of railroad equipment (hereinafter called the Units), leased by the Lessor to the Lessee pursuant to the Lease, and in consideration of other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the assignee named in the Assignment (hereinafter called the Assignee), at such address as may be furnished in writing to the Lessee by the Assignee, or as otherwise directed in the Lease; it being hereby

agreed that the obligation of the Lessee to pay all the aforesaid Payments is absolute and unconditional;

(2) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Assignee were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Assignee shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Assignee against any penalty charge or expense arising out of any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or *pari passu* with the right of the Assignee to apply such payments as provided in the Assignment;

(4) the Assignee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Assignee, be terminated or modified, or any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

Anything to the contrary notwithstanding in this Consent and Agreement or the Assignment, the Lessee assumes no obligations or liability with respect to any security of the

Lessor or any other person, it being understood that the Lessee's obligations hereunder are solely to perform the obligations contained in the Lease, as directed by the Lessor herein and in the Assignment.

This Consent and Agreement, when accepted by the Assignee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of _____, and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of:

THE WESTERN PACIFIC RAILROAD
COMPANY,

[CORPORATE SEAL]

by
Vice President—Finance

Attest:

.....
Secretary

The foregoing Consent and Agreement is hereby
accepted, as of the _____ day of _____.

.....

ANNEX D

ASSIGNMENT OF PURCHASE AGREEMENTS

KNOW ALL MEN BY THESE PRESENTS, that as of August 1, 1970, THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO ALLIS-CHALMERS LEASING CORPORATION, a Wisconsin corporation (hereinafter called the Assignee), all the Assignor's right, title and interest in and to those certain purchase agreements (hereinafter, as the same may have been amended to the date hereof, called the Purchase Agreements) described in the table set out below, between The Assignor and the respective Manufacturers indicated in said table (hereinafter sometimes individually called a Manufacturer and together the Manufacturers), such Purchase Agreements being dated as indicated:

<u>Manufacturer</u>	<u>Date of Purchase Agreement</u>
The Darby Products of Steel Plate Corporation	March 5, 1970
General Motors Corporation (Electro-Motive Division)	March 5, 1970
The Maxson Corporation	February 5, 1970
Pacific Car and Foundry Company	November 17, 1969

in so far as they relate to the railroad equipment (hereinafter called the Equipment) described in each Annex B to four Manufacturing Agreements each dated as of August 1, 1970 (hereinafter called the Manufacturing Agreements), among the Assignee, the Assignor and the respective Manufacturers; together with all and singular the Equipment and all right, title and interest now owned or

hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreements except as provided in the Lease of Railroad Equipment dated as of August 1, 1970, between the Assignor and the Assignee.

To have and to hold all and singular the Equipment and the Purchase Agreements to the Assignee and its assigns for its own use and benefit forever.

The Assignor does hereby represent that it is the lawful owner, free from all encumbrances, of the Purchase Agreements and that the Assignor has the right to sell and assign the Purchase Agreements as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of the Equipment to be acquired from the Manufacturers will be made under the Manufacturing Agreements as provided in Article 3 of the Manufacturing Agreements.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

THE WESTERN PACIFIC
RAILROAD COMPANY,

by
Vice President—Finance

[CORPORATE SEAL]

ATTEST:

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Secretary

The foregoing Assignment is hereby
accepted as of August 1, 1970.

ALLIS-CHALMERS LEASING
CORPORATION,

by

*Vice President and
General Manager*

[CORPORATE SEAL]

ATTEST:

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Assistant Secretary